No. 97-2004

In the Supreme Court of the United States

OCTOBER TERM, 1998

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, PETITIONER

v.

NORMAN LAW, ANDREW GREER, PETER HERRMANN, MICHAEL JARVIS, JR., CHARLES M. RIEB, DOUG SCHREIBER, LAZARO COLLAZO, ROBIN DREIZLER, AND FRANK CRUZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, RESPONDENTS

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

There is no hint in the brief in opposition — just as there was no hint in the opinions of the courts below — that any consumer harm will result from the REC Rule that has been invalidated on summary judgment. Respondents avoid any consumer welfare analysis by hiding behind the label "price fixing," just as the court of appeals avoided serious economic analysis by labeling the supposed anticompetitive effect "obvious." In an antitrust case, failure to link a challenged practice to consumer welfare is no small defect. "Congress designed the Sherman Act as a 'consumer welfare prescription.'" *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 343 (1979). That the NCAA (at the expense of its member colleges) has been ordered to pay $67 million to assistant coaches (see Br. in Opp. 6 n.5, 11 n.8) tells us nothing about harm to consumers or to competition.

"The history of antitrust is littered with practices condemned because of misunderstanding." Easterbrook, *The Limits of Antitrust*, 63 TEX. L. REV. 1, 21 (1984). Simplistic misunderstanding is respondents' approach. They insist that the REC Rule is a "naked price restraint"; that it is "obviously anticompetitive"; and that the REC Rule, which limits an *input* to college basketball, is "nearly identical" to the *output* restraint on telecasts of football games that was condemned in *NCAA* v. *Board of Regents*, 468 U.S. 85 (1984). They even claim, in the teeth of the record (*e.g.*, Pet. App. 89a), that the NCAA "admitted" that the REC Rule was anticompetitive.

Respondents' broad assertions cannot obscure the inconsistency between the decision below and this Court's precedents, or the conflicts between the decision below and decisions of other courts of appeals. To allow the decision to stand could seriously compromise the NCAA's ability to engage in the legitimate regulation of athletics that this Court resoundingly endorsed in *Board of Regents*.

1. The Sherman Act is concerned with harm to the competitive process (and thus to consumers), not with every setback to those who wish to sell goods or services. Unable to show that the REC Rule harmed consumers at all, respondents mischaracterize it as a "naked horizontal price restraint" and "garden-variety price fixing"; they even suggest, as if *Board of Regents* did not exist, that the Rule should be condemned per se. Br. in Opp. 2, 7, 18, 19 n.14. But this Court explained almost 20 years ago that the fact that two parties have "literally" fixed a price does not necessarily mean

that they have engaged in "per se price fixing" violating the antitrust laws; *that* inquiry focuses on whether the practice would "restrict competition *and decrease output*." *BMI* v. *CBS*, 441 U.S. 1, 9, 19-20 (1979) (emphasis added). A horizontal price "restraint is 'naked'" and thus may be condemned per se "*only* when the agreement is *not* ancillary to cooperative productive activity engaged in by the agreeing parties." R. BORK, THE ANTITRUST PARADOX 263 (2d ed. 1993) (emphasis added); see *BMI*, 441 U.S. at 23.

The REC Rule, however, plainly *is* ancillary to the "cooperative productive activity" of the NCAA, *i.e.*, its "procompetitive" mission of producing intercollegiate sports and maintaining their "character and quality." *Board of Regents*, 468 U.S. at 102. Respondents can label the REC Rule "naked" and "garden-variety" only by ignoring its context. But that context dictates that NCAA rules must be evaluated with due regard for the "cooperation" that "is necessary if the type of competition that petitioner and its member institutions seek to market is to be preserved." *Id.* at 117.

The distinction between "naked" horizontal agreements and those that are ancillary to joint productive activity is fundamental in antitrust analysis in business and sports contexts alike, as *BMI* demonstrates. But mislabeling an ancillary restraint as "naked" leads to especially anomalous results in an amateur sports context. As this Court recognized in *Board of Regents*, horizontal agreements are necessary to permit individual schools to maintain "effectiveness as * * * competitor[s] on the playing field." 468 U.S. at 101-102. Only agreements of that sort can assure schools that their athletic competitors will abide by the same rules. The Court's blessing of horizontal restraints that enhance competition on the basketball court highlights a major distinction between the NCAA context and business contexts. Businesses rarely have any legitimate interest in equalizing competition; in the sports context fair and robust competition is the very product that is being sold.

In holding on summary judgment that the REC Rule was a "naked" restraint, the lower courts simply discounted the evidence of its procompetitive justifications.[1] See Pet. 3-5, 24-27. Indeed,

[1] The Tenth Circuit seems to have thought that, because this Court had condemned an NCAA rule in *Board of Regents*, a lower court was entitled to condemn *summarily* a different NCAA rule. But *Board of Regents* was a fact-intensive opinion that — particularly in the section rejecting the NCAA's justifications, 468 U.S. at 113-120 — relied heavily on the *findings* made after

they missed the fundamental point that college basketball is necessarily a cooperative enterprise, and that NCAA members are not atomistic competitors producing one-team basketball exhibitions. Unlike the output restrictions on broadcasts of football games in *Board of Regents*, the REC Rule limits how "competitors * * * create and define the competition to be marketed." 468 U.S. at 101.

There was ample evidence that the REC Rule — which closed loopholes in its judicially approved predecessor — was designed to serve this end. The Rule leveled the playing field by ensuring that schools with the resources to evade the old rule no longer could hire five experienced, full-time coaches while their rivals could hire only the allotted three. The Rule also relieved resource-constrained athletic departments from a Hobson's Choice: either hire a true "restricted earnings" coach while rivals add *de facto* full-time coaches, or shift funds to basketball coaching at the expense of other participatory sports desired by students. See Amicus Br. of America East Conf., *et al.*, at 11 & n.10. The REC Rule, with its compensation cap, shifted "sham" part-time coaches into fully paid positions, more effectively preserving entry-level positions for *bona fide* graduate assistants and other coaching neophytes.

2. The REC Rule was not "garden-variety" price fixing for another reason. It is hornbook law that "[p]articular forms of price fixing by buyers may not be unlawful" at all. 1 J. VON KALINOWSKI ET AL., ANTITRUST LAWS & TRADE REGULATION § 13.02, at 13-7 (2d ed. 1998). Under modern antitrust jurisprudence, the treatment of price agreements among buyers, such as the price *cap* here, need not be symmetrical with the treatment of price fixing by sellers. *E.g.*, *Northwest Wholesale Stationers, Inc.* v. *Pacific Stationery & Printing Co.*, 472 U.S. 284, 295 (1985). Other courts of appeals recognize this distinction,[2] which is grounded in logic:

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a trial and affirmed on appeal. It is not a precedent for rejecting the NCAA's justifications *without* a trial. In similar circumstances, the Ninth Circuit reversed a district court ruling that invalidated a sports league's relocation rule on summary judgment, noting that the prior Ninth Circuit opinion on which the district court had relied had invalidated a relocation rule only after intensive factual inquiry into the league's justifications. See *NBA* v. *SDC Basketball Club, Inc.*, 815 F.2d 562, 567-568 (9th Cir. 1987).

[2] See, *e.g.*, *Adaptive Power Solutions* v. *Hughes Missile Systems*, 141 F.3d 947, 950, 952-953 (9th Cir. 1998), petition for cert. pending, No. 98-150; *United States* v. *Brown University*, 5 F.3d 658, 670 (3d Cir. 1993); *Kartell*

joint agreements by buyers may lower prices, and "[l]ow prices * * * benefit consumers regardless of how those prices are set." *State Oil Co.* v. *Khan*, 118 S. Ct. 275, 282 (1997). See Pet. 14-17.

Contrary to respondents' caricature of our position (Br. in Opp. 8-10), we do not maintain that horizontal agreements on price among buyers are *exempt* from the Sherman Act. We agree that "antitrust law forbids all agreements among competitors (such as competing employers) that *unreasonably* lessen competition." *Brown* v. *Pro Football, Inc.*, 518 U.S. 231, 241 (1996) (emphasis added) (upholding agreement among NFL owners on payments to players). We merely contend that what is *unreasonable* in this context must be determined with due recognition that inputs, not outputs, are being restricted and that the parties are engaged in a joint productive sports enterprise. See *id.* at 252 (Stevens, J., dissenting) (although "the market-wide agreement among these employers fixed the salaries * * * at a dramatically lower level than would obtain in a free market, * * * the special characteristics of this industry may provide a justification for the agreement under the rule of reason, see *[NCAA]* v. *Board of Regents*") (emphasis added).

Antitrust law does not *peremptorily* condemn buying-side restraints in the absence of showings of market power and constriction of the ultimate *output* — which could harm consumers. See *Northwest Stationers*, 472 U.S. at 295. Economic principles and decisions of this Court amply support that view.[3] Even in *Mandeville Island Farms* v. *American Crystal Sugar Co.*, 334 U.S. 219

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v. *Blue Shield*, 749 F.2d 922, 931 (1st Cir. 1984) (Breyer, J.).

[3] Respondents rely (Br. in Opp. 8) on several antiquated boycott cases, including *Radovich* v. *NFL*, 352 U.S. 445 (1957), and *Anderson* v. *Shipowners' Ass'n*, 272 U.S. 359 (1926). *Radovich* and *Anderson* do not support a claim that joint-venture salary limits are condemned per se. In those cases, this Court primarily considered whether the alleged employer boycotts indirectly restrained interstate "commerce" within the terms of the Sherman Act. See 15 U.S.C. § 17 ("The labor of a human being is not a commodity or article of commerce."). *Radovich* did not mention salary levels at all. The *Anderson* opinion mentioned an agreement on wage levels in passing, but the plaintiff complained only that he had been refused employment, not that he had been paid too little. 272 U.S. at 362. The Court's substantive discussion simply repeated the long-abandoned view that condemned *any* agreement that restrained individual businesses' "freedom to carry on interstate and foreign commerce according to their own choice and discretion." *Id.* at 365.

(1948), this Court condemned a price-fixing agreement among buyers only after extensively discussing and analyzing their market power, and focused on the *output* effects of the challenged restraint. *Id.* at 239-242. The Court made clear that it condemned that restraint based on specific market facts, and that a "significantly different" setting might require a different analysis — scarcely the knee-jerk per se approach that respondents rely on here. *Id.* at 244; see also Jacobson & Dorman, 36 ANTITRUST BULL. 1, 30 (1991).

Faced with inhospitable precedent, respondents suggest (Br. in Opp. 7) that the NCAA has waived the right to explain why the input-side aspects of the REC Rule confirm that the Tenth Circuit misapplied the epithet "obvious[ly] anticompetitive." In respondents' sole and inapposite authority, *Delta Air Lines* v. *August*, 450 U.S. 346, 362 (1981), the petitioner waived a separate *question* based on a different Federal Rule of Civil Procedure. See No. 79-814, Pet. 2. But the question presented in our petition does not focus on a "conflict regarding the application of Section 1 of the Sherman Act to combinations of buyers as opposed to sellers." Br. in Opp. 8. Rather, the buying-side character of the REC Rule supplies a supplemental *reason* why the REC Rule was not so "obvious[ly] anticompetitive" as to excuse serious antitrust analysis — a question that plainly is presented and unquestionably was preserved.

Accordingly, the *argument* based on the differing nature of input restraints is properly before the Court. "Once a federal *claim* is properly presented, a party can make *any* argument in support of that claim; *parties are not limited to the precise arguments they made below.*" *Yee* v. *City of Escondido*, 503 U.S. 519, 534 (1992) (emphasis added). Even an argument that was "expressly disavowed" below may support reversal by this Court if the contention is "not a new claim" but rather is a "new argument to support" a "consistent claim." *Lebron* v. *National Railroad Passenger Corp.*, 513 U.S. 374, 378-379 (1995). The NCAA has consistently maintained that the REC Rule is not anticompetitive and has not forfeited any right to argue fully in support of that position here.[4]

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[4] Respondents also hint (Br. in Opp. 6, 18) that perhaps the judgment below should not be reviewed because it is "interlocutory." This Court unquestionably has jurisdiction to review interlocutory judgments, R. STERN ET AL., SUPREME COURT PRACTICE § 4.18, at 195 (7th ed. 1993), and it has exercised that jurisdiction to review some of its most prominent antitrust and securities cases. See, *e.g.*, *State Oil*, *supra*; *Central Bank* v. *First Interstate Bank*, 511

3. The court below candidly "disagree[d]" with *Hennessey* v. *NCAA*, 564 F.2d 1136 (5th Cir. 1977), which it found "unpersuasive" and "err[oneous] as a matter of law." Pet. App. 19a, 25a, 26a. Respondents claim that *Hennessey* and *Board of Regents of the University of Oklahoma* v. *NCAA*, 561 P.2d 499 (Okla. 1977), "have been superseded by * * * *Board of Regents*" (Br. in Opp. 11), but this Court cited *both* cases to illustrate how the NCAA performs its "procompetitive" and "vital role in enabling college [athletic competition] to preserve its character." 468 U.S. at 101-102 n.24; see also *id.* at 122, 123 (dissent) (citing *Hennessey*).[5]

Respondents try to distinguish *Hennessey* by asserting that the restriction in that case had "no effect on [coaches'] salaries." Br. in Opp. 10. That is not true: the Fifth Circuit acknowledged that limiting the number of full-salary coaches might "stabilize, if not depress, the compensation which any assistant coach can obtain for his services." 564 F.2d at 1153. Indeed, one plaintiff in *Hennessey* showed that his salary had been reduced from $20,000 to $2100 because of the coaching limitation at issue there. *Id.* at 1141 n.3.

More important, the rule approved in *Hennessey* and the REC Rule have the same purpose (promoting competitive parity) and the same effect: fewer coaching positions with unrestricted salaries. Just as an "agreement on output * * * equates to a price-fixing agreement," *General Leaseways, Inc.* v. *National Truck Leasing Ass'n*, 744 F.2d 588, 594 (7th Cir. 1984) (Posner, J.), limitations

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U.S. 164 (1994); *Eastman Kodak Co.* v. *Image Technical Servs.*, 504 U.S. 451 (1992); *Summit Health, Ltd.* v. *Pinhas*, 500 U.S. 322 (1991); *Matsushita Elec. Indus. Co.* v. *Zenith Radio*, 475 U.S. 574 (1986); *Herman & MacLean* v. *Huddleston*, 459 U.S. 375 (1983); *Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36 (1977); *TSC Indus.* v. *Northway, Inc.*, 426 U.S. 438 (1976). This important case, which has now produced a $67 million judgment based on the legally erroneous Tenth Circuit judgment, warrants similar treatment.

[5] *Hennessey* — and not the decision below — accords with more recent decisions of the courts of appeals that have upheld NCAA horizontal restraints under the rule of reason "without difficulty." *McCormack* v. *NCAA*, 845 F.2d 1338, 1344 (5th Cir. 1988). See *Smith* v. *NCAA*, 139 F.3d 180, 187 (3d Cir. 1998) (affirming dismissal because restraint "clearly survives a rule of reason analysis"), petitions for cert. pending, Nos. 98-84, 98-107; *Hairston* v. *Pacific 10 Conf.*, 101 F.3d 1315, 1320 (9th Cir. 1996); *Banks* v. *NCAA*, 977 F.2d 1081, 1087-1094 (7th Cir. 1992). The contrast between the prompt rejections of antitrust challenges in *Smith* and other cases and the summary condemnation here underscores the need for further guidance from this Court.

on the number of purchases are equivalent to limitations on the price to be paid. No coherent antitrust jurisprudence would permit NCAA members collectively to limit to three the openings available to respondents, but award respondents massive treble damages because the schools added a fourth position with limited compensation. Such a bizarre distinction can be advanced only if there is something sacred about "price" that requires rigid legal rules unrelated to economic reality. Yet that attitude is completely out of step with this Court's jurisprudence. See *State Oil*, 118 S. Ct. at 282; *BMI*, 441 U.S. at 9, 19-20, 23; cf. *Kodak*, 504 U.S. at 466-467 ("presumptions that rest on formalistic distinctions rather than actual market realities are generally disfavored in antitrust law").[6]

4. Respondents repeatedly claim that "the NCAA admitted the anticompetitive effects" of the REC Rule. Br. in Opp. i, 4, 7, 12, 14 n.11. The district court opinion belies that fabrication: "The NCAA first argues that the [REC] Rule has no anticompetitive effect * * *." Pet. App. 89a.

Respondents' tactic highlights their — and the Tenth Circuit's — legally deficient view of "anticompetitive effects." The NCAA acknowledged only that "some restricted earnings coaches were paid $60,000 to $70,000" (Pet. App. 90a) before the REC Rule took effect, and that such incomes were not available from "*restricted earnings*" positions afterward.

As explained above, the competitive effects of the REC Rule properly should be gauged in the output market in which college basketball competes with other sports entertainment. But even considering the input market for coaching services, modern rule-of-reason analysis focuses on market-wide effects on *competition* rather than specific adverse effects on a particular plaintiff. In finding on summary judgment that the "anticompetitive effects" of the REC Rule were "obvious," however, the Tenth Circuit did not even *identify* the market in which those effects occurred. Instead, the court simply assumed its conclusion, asserting that the REC Rule had "obvious anticompetitive effects" — effectively according the REC Rule per se treatment — without considering the substan-

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[6] As the Solicitor General — who *supported* condemnation of the NCAA rule at issue in *Board of Regents* — observed, "the mere fact that prices are in some sense 'fixed' or that competitors may be excluded does not automatically resolve the question of legality under the Sherman Act." Br. for the United States as Amicus Curiae at 6, *Board of Regents* (footnote omitted).

tial competition for coaches' services *by the very schools subject to the REC Rule*, not to mention the many other competing buyers of coaching services. See Pet. 5-6. As we explained in the petition (at 21), indistinct evidence of effects on the salary of "some" unnamed coaches — without consideration of the coaches' alternative sources of employment in the relevant market — establishes at most an effect on individuals, not on the market for their services.[7]

Respondents assert (Br. in Opp. 12) that a "quick look" under the rule of reason does not require *any* market analysis. But that is not so. "[T]he initial 'quick look' should be more than a casual glance." Schmalensee, *Agreements Between Competitors*, in ANTITRUST, INNOVATION, AND COMPETITIVENESS 98, 110-111 (Jorde & Teece, eds., 1992). Respondents do not dispute that other courts of appeals require a threshold showing of market power before applying a "quick look" rule of reason unless *marketwide* anticompetitive effects have been shown.[8] See Pet. 18-21.

The problem in this case is that the Tenth Circuit applied a very different test. The court ignored the requirement that marketwide anticompetitive effects be shown before proof of market power can be excused. Instead, the court concluded that proof of *some* dislocation to *some* market participants sufficed to declare the restraint unlawful, without any attempt to gauge the impact on the whole market, or even to define the market. That analysis confuses harm to some market participants with harm to competition. The two are not the same. See, *e.g.*, *Cargill, Inc.* v. *Monfort of Colorado, Inc.*, 479 U.S. 104, 115-117 (1987).

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[7] This deficiency is not overcome — but rather is greatly augmented — by the later damages award, which rested on the district court's ruling that *no* individual plaintiff needed to prove actual damages. The jury was allowed simply to assume that each restricted earnings coach would have earned 83.7% of the salary of the second full-time assistant at each school. See *Law* v. *NCAA*, No. 94-2053, Tr. 1742-1744 (D. Kan. 1998).

[8] Respondents incorrectly contend (Br. in Opp. 13-14) that the courts in *California Dental* and *Detroit Auto Dealers* did not require proof of market power. Leading commentators recognize that the Ninth Circuit in *California Dental* "concluded that application of the 'quick look' required at least a minimal showing of market power." P. AREEDA & H. HOVENKAMP, ANTITRUST LAW ¶ 1505, at 406 (1998 Supp.). Likewise, the administrative record in *Detroit Auto Dealers* made clear that more than 95% of Detroit dealerships participated in the challenged restraint. See *In re Detroit Auto Dealers Ass'n*, 111 F.T.C. 418, 479 (1989), aff'd, 955 F.2d 457 (6th Cir. 1992).

Board of Regents provides no fig leaf for the Tenth Circuit's remarkable failure to examine anything beyond asserted harm to some plaintiffs. This Court did not *presume* that the price and output restrictions in *Board of Regents* caused anticompetitive effects. Rather, that conclusion rested on factual findings, after a trial, that the relevant market consisted of television broadcasts of college football games, and that the broadcast limitations reduced the number of broadcasts and increased the price paid for that limited output. 468 U.S. at 111-113, 119-120. Moreover, the Court expressly held that the NCAA had "evident * * * market power." *Id.* at 111.

By contrast, the Tenth Circuit substituted circular reasoning for market analysis. In doing so, the decision below conflicts with decisions of this Court and other courts of appeals.

5. Respondents also claim that the Tenth Circuit's summary rejection of procompetitive justifications as not both absolutely necessary and optimally effective is "identical" (Br. in Opp. 15) to the standards applied by other courts of appeals. The conflicting decisions of those courts show otherwise.

As we explained (Pet. 23-24), the Third and Seventh Circuits have required the defendant in a "quick look" rule-of-reason case merely to articulate a plausible efficiency justification for the restraint in order to put plaintiffs to their proof of market power or actual anticompetitive effects. See Chang, Evans & Schmalensee, *Some Economic Principles For Guiding Antitrust Policy Towards Joint Ventures*, 1998 COLUM. BUS. L. REV. 223, 280 & n.116 (comparing "quick look" inquiry to burden-shifting in employment discrimination cases). The Tenth Circuit reads the rule of reason out of "quick look" analysis by imposing an impossible burden on defendants. Compare *id.* at 268 (warning against "easy" speculations "about alternative, less anticompetitive means").[9]

Respondents suggest (Br. in Opp. 16) that this Court in *Board of Regents* applied the same standard that the Tenth Circuit used below. This Court held, however, that the NCAA needed only to provide "some competitive justification" for a challenged restraint, 468 U.S. at 110, and stopped short of full rule-of-reason analysis only because the output limitation at issue in *Board of Regents* was

[9] The Solicitor General in *Board of Regents* likewise warned against judicial "second-guess[ing]" and too-easy resort to claims of less restrictive alternatives as a reason to disregard procompetitive justifications. Br. for the United States as Amicus Curiae at 12, 28-29, *Board of Regents*.

"not even arguably tailored" to the asserted procompetitive interests. *Id.* at 119. Unlike that output restraint, however, the REC Rule *did* "regulate * * * the way in which the colleges may use the revenues that are generated by their [basketball] programs." *Ibid.* That, this Court indicated, *would* serve a procompetitive "interest in maintaining a competitive balance" among schools. *Id.* at 118.[10]

6. Respondents now tell this Court that this case has limited significance and "does not threaten legitimate NCAA regulation of intercollegiate athletics." Br. in Opp. 17. Respondents' trial counsel whistled a different tune after the district court decision; then, this was "the most important legal case in the history of intercollegiate athletics." See Pet. 8. Neutral observers share respondents' unguarded view, not their revised one. See, *e.g.*, *$67 Million Hit Spurs Talk of Breaking Up NCAA*, CHI. TRIB., Aug. 11, 1998, § 4, at 1; see also Pet. 27-29. If the NCAA's carefully tailored response to a problem — in particular, its effort to *retain* one more coaching position — can be summarily condemned under the antitrust laws, it is difficult to see how the NCAA can avoid antitrust challenges to a host of other input restrictions. Indeed, as the American Council on Education explains (Amicus Br. 5), the strictures of the Tenth Circuit's decision would impede broader collective undertakings of the nation's colleges and universities.

NCAA v. *Board of Regents* is rightly regarded as one of this Court's most important antitrust decisions — not just because of its impact on sports, but because of its approach to the rule of reason, which guides most antitrust analysis. See, *e.g.*, M. HANDLER, R. PITOFSKY, H. GOLDSCHMID & D. WOOD, CASES AND MATERIALS: TRADE REGULATION 300-319 (4th ed. 1997); 7 P. AREEDA, ANTITRUST LAW ¶ 1511 (1986). This case is no less important. Wildly contrasting approaches — like those of the *Smith*, *Hennessey*, and *Oklahoma Regents* courts on the one hand, and the court below on the other — will proliferate if this Court does not act now to clarify its 14-year-old *Board of Regents* decision.

For the foregoing reasons and those given in the petition, the petition for a writ of certiorari should be granted.

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[10] "[T]he NCAA has a number of rules that seek directly to promote competitive parity in college football. These rules limit * * * the sizes of coaching staffs * * * — all without direct restrictions on output." Br. for the United States as Amicus Curiae at 21, *Board of Regents*.

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